

Violation of Patients'
Right to the Second Opinion

Online/PGPORTAL.

The petitioner is being
threatened by the Indian
Military.

Ref. CPT/ACFSH/MODND/916(4)
No

Anirban Chakraborty

S/o Nk Gopal Chakraborty (Retd.)

2 No. Motilal Colony, P.O.: Rajbari Colony,
Calcutta 700081, (N) 24 Pgs., West Bengal,

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To,

Nanda Kishore Panda
The Deputy Director (WE)

Department of Ex-Servicemen Welfare,
Ministry of Defence, Govt. of India
221, 'B' Wing, Sena Bhawan, New Delhi

Dated Calcutta the 20th August 2023.

Subject:

**A complaint of having no policy in the C.G.H.S. and the E.C.H.S.
for facilitating the beneficiaries to exercise the right to obtain 2nd medical opinion,
approved and adopted by the Government of India and that of States and Union Territories;
communicated by the letter dated 28th June 2023 of
Additional DDG(AK)
the Directorate General of Health Services, National Council Secretariat,
Ministry of Health and Family Welfare, Government of India.**

References:

- 1) Complaint ref. no. CPT/GCFFR/DGAFMS/94 dated 14th Sep 2021
having PGPORTAL docket no. MODEF/E/2021/03491.
- 2) Complaint ref. no. CPT/GCFFR/DESW/95 dated 14th Sep 2021
having PGPORTAL docket no. DDESW/E/2021/03074.
- 3) Complaint ref. no. CPT/ACFSF/NHRC/30(GCFFR-94) dated 27th
Nov 2021 having PGPORTAL docket no. MODEF/E/2021/05261.

Authority:

The complainant is in the capacity of being the patient-party and
offspring of the E.C.H.S. beneficiary:

Nk Gopal Chakraborty (Retired, Army) (Father)

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E.C.H.S. Card No.: XXXXXXXXXXXXXXXXXXXX

E.C.H.S. Polyclinic: Salt Lake

E.C.H.S. Regional Centre: Kolkata, West Bengal

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Respected Official,

*If your child has a brain tumor, you want the best surgeon. But to become the best, which is merely a question of gaining experience, you must first have operated on children without having experience, and what do you tell the parents then? That their child is important to the future of the young and as-yet-untested neurosurgeon?*¹

Background:

Relation of medical treatment to life

I see in Diwali that, if time-to-time oil is added to the oil lamp; then, the lamp glows for a long time. If, however, oil is added at last when much of the wick has burnt out; then, the dimmed light suddenly brightens, tries to reach its former glory, suddenly collapse giving out unburned oil in air, and repeats into slow death.

Here the wick resembles the patients, the act of adding oil resembles medical treatment, and this analogy emphasizes the importance of getting the best medical treatment as soon as possible for the sake of one's own life and that of dear dependents. Pertinently, the Constitutional right to life encompasses the right to obtain medical treatment:

*It is now settled law that right to health is an integral to right to life.*²

In BM Birla Hospital Calcutta, I have witnessed an aged wife carrying a torn side bag but determined to had its husband seen by a specialist in that costly hospital, where many patients come in their private cars. In the same hospital, I have witnessed a father determined to had its baby seen by a paediatric cardiologist despite been advised by its brother that "paisa nehi hai tho baccha paida que kia" (translation: why gave birth to the baby if there is no money).

¹ Dr. Henry Marsh, British neurosurgeon, New York Times, 3rd Jan 2016.

² The Supreme Court of India, State of Punjab & Ors. Vs. Mohinder Singh Chawla etc., Civil Appeal Nos.16980-81 of 1996, Pg. No. 2.

Violation of patients' rights

Now, Bengali is my mother tongue, I can speak but cannot read and write; it is so because Hindi and English were the only languages I needed to communicate with the people of different states until my father got retired from the Army. Here in West Bengal, buses are as much mystery as are Bengali alphabets to me. The reason why overly crowded private buses attract this ignorant and relatively empty Calcutta State Transport Corporation Government buses repel this ignorant is that, the private bus conductors earn salary in proportion to the number of passengers the conductors could announce the route, whereas the government bus conductors earn salary in proportion to the number of years the conductors have done services.

Greed of wealth and dereliction that comes with financial security are two faces of the same coin. I have witnessed a private hospital to continue billing a brain dead patient admitted in ICU until the patient-party got violent; I have witnessed a State Government hospital having around 60 out of 200 rural patients still in queue when the head of department suddenly left, at around 3 PM, leaving the juniors to attend; I have also witnessed a non-empanelled specialist bringing back an E.C.H.S. patient from operation table of a State Government Hospital using just a tablet lying unused in the dispensary of the Command Hospital Eastern Command.

The reason why there are disproportionate numbers of complaints against Government and private hospitals are as follows:

- 1) Those who are financially capable shift to private hospitals and file complaints against the private hospitals.
- 2) Those who are financially incapable stay in Government hospitals and wish melioration of the Government hospitals.
- 3) The remaining are left to die in cheap Government hospitals by their uncaring and greedy (adult) children - father builds house, keeps bank balance for married sons, and the sons drive private car, but the father dies on the third day of admission due to State Government hospital acquired diseases and the mother dies of negligence never having C.G.H.S. card because the cost of the card, a lump sum amount, was dearer to the sons.
- 4) In West Bengal, Bapuji Cake costs Rs. 7 and Monginis cake costs above Rs. 300. You know the standard of government service is reasonable, neither the best nor the worst, just because no person in this country, rich or poor, should die without ever having the taste of cake - at least of Bapuji cake. This explains why Swasthyasathi card holders (W.B. Govt.) and E.C.H.S. and C.G.H.S. card holders (Central Govt.) are sometimes refused services by costly hospitals

(with exception BM Birla). C.G.H.S. and E.C.H.S. are here to assure the beneficiaries that they will live in their sunset years with dignity and independently; but sadly, compromise is the best advocate, as no patient is supposed to get ambulated to an advocate's chamber instead of a doctor's clinic.

The law provides rights to the patients as safeguard where there are instances of violation, such as the following:

- 1) The E.C.H.S. beneficiaries of other ranks had complained getting inferior quality medical treatment than the beneficiaries of officer ranks:

(iii) however priority in ECHS Polyclinics, instead of being given to the aforesaid persons, is being given to officers;

(iv) that ex-servicemen of the officer cadre are not only attended to first but also out of turn, in the said clinics and also issued medicines of different specifications;

(v) that as a result thereof, ex-servicemen of other ranks, even if suffering from serious ailments, are made to wait endlessly;

(vi) that not only so, owing to the ex-servicemen of the other ranks being attended to late, the appointments given to them for consulting the specialists or at empanelled hospitals are also delayed;

6. We can however well imagine the scenario prevalent in the ECHS Polyclinics, Military Hospitals / Empanelled Hospitals. The same is not typical of ECHS Polyclinics / Military Hospitals / Empanelled Hospitals only but of all institutions. We, as a country, ruled first by the kings and chieftains and later by the British, have it ingrained in us, to respect and give priority in all walks of life to rank, office and wealth. Rank, office and wealth opens doors to holders thereof without even there being any provision therefor in law, Rules and Regulations. Though our Constitution set the course right by ingraining therein the equality clause (Article 14) and by abolishing titles (Article 18) but the same has not been achieved in practice in the last more than 65 years.³

- 2) The E.C.H.S. forbids its beneficiaries from being referred to other specialists at the empanelled hospitals when treatment is available in a Military Hospital in a given city - what important is not outcome of treatment but mere existence of a specialist per department:

³ The High Court of Delhi, Anti Discrimination Core Vs. Central Organization ECHS & Ors, W.P.(C) 5522/2015.

2. It has been observed that specialists of service (military) hospitals are endorsing on the case sheet that 'the patient is unwilling/refusing for treatment in service hospital' and hence 'referred to the ECHS empanelled hospital' when an ECHS member has been referred by the Polyclinic to the concerned service specialist. The ECHS scheme was introduced wef 01 Apr 03 vide above mentioned GoI letter wherein it is clearly mentioned vide Para 2 & 3 that the ECHS patients to be referred to the empanelled hospitals only after utilisation of all the resources of service hospitals and if it is not in position to provide the requisite service. Referring ECHS patients to empanelled hospital stating that 'patient is not willing/refusing for treatment at service hospital' is clear violation of Govt orders and the spirit of the scheme.

3. Apropos, all the service hospitals under you AOR be instructed to provide the necessary medical treatment in the service hospitals to the extent availability of resources and not to refer the ECHS patients to empanelled hospital solely on the basis of unwillingness/refusal by the patient. The ECHS patients to be referred to empanelled hospital only if the resources of service hospitals are exhausted and the hospital is not in a position to provide the necessary treatment.⁴

- 3) The C.G.H.S. and the E.C.H.S. are being controlled by the administrators who are themselves unaware of the legal rights of their beneficiaries, such as the right to obtain 2nd medical opinion adopted and recognised by the Government of India and that of States and Union Territories⁵:

2. There is no policy in CGHS/ ECHS on second opinion by a specialist for the same ailment. Second opinion if required by you may be obtained from a Military Hospital or through your own resources from any other private hospital.⁶

Disambiguation on the right to obtain 2nd medical opinion

The right to obtain 2nd medical opinion gives hope and the best chance to a beneficiary to save its life from delayed and average treatment that adds more to misery and side effects, that prolongs suffering, and that shortens life span. The right to obtain 2nd medical opinion purports neither a number nor

⁴ C.O. E.C.H.S. letter being no. B/49778/AG/ECHS/Claims dated 22nd May 2018, signatory Director Medical IVS Gahlot.

⁵ National Council Secretariat, Directorate General of Health Services, Ministry of Health and Family Welfare, Govt. of India, letter being no. FTS - 8227200 File No. Z.28016/32/2023-SAS-II(NCS) dated 28th June 2023 (copy enclosed).

⁶ Col Anupam N Adhualia (Director Medical)'s email dated 12th Aug 2021 (copy enclosed).

compromise with the Bapuji Caste health care scheme that the Government provides, but it is the pursuit of happiness. The right to obtain 2nd medical opinion, therefore, does not mean visiting 2, 3, 4, and more Military or empanelled doctors but means freedom to save one's life, freedom to enjoy life at its best, and freedom from all restraining policies of the health care scheme, which dictates do's and don'ts:

- *Do exercise your option of being referred to Service Hospital/Empanelled facility of your choice, but only when referrals are advised by the Polyclinic.*
- *Do not ask for drugs prescribed by private doctors without referral from Polyclinic.*⁷

Not every candidate passes the qualifying exam with the 1st rank - it is well understood, the doctors should not be blamed. A reasonable medical treatment is, therefore, neither the best nor the worst. Using that as shield many doctors facing trial for medical negligence, get acquitted:

41.The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence is what the law requires.

35. The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.⁸

"The law, like medicine, is an inexact science. One cannot predict with certainty an outcome of many cases."⁹ Medical treatment is not black and white but grey, for that, a doctor is often unsure and wanders at the best of its belief, knowledge, and experience; then, question arises what is the foundation of

⁷ Notice of Do's and Don'ts published in the E.C.H.S. notified Telegram group by the Officer-in-Charge of the Polyclinic Salt Lake, dated 1st July 2023 (copy enclosed).

⁸ Armed Forces Tribunal Regional Bench, Kochi, Sqn Ldr Shaji S.G. Nair vs. MoD and others, O.A. no. 104 of 2015.

⁹ Ditto, Pg. no. 15.

such belief. Answering that becomes exceeding difficult when the doctor is pushed away from every corner where the doctor takes shelter to answer that question. Someone skilled knows all the rules and someone experienced knows all the exceptions.

The beneficiaries, therefore, have legal right to use that as sword as well, to obtain at will the 2nd medical opinion from either Military doctors, empanelled doctors on referrals, or non-empanelled doctors out of one's own expenses. The profession of Medicine runs entirely on the faith of the patients; that is why there was Dr. Bidhan Chandra Roy and doctors who lost significance in history, and that is why there are plethora of mutually exclusive systems of medicine like allopathy, homeopathy, Ayurveda, and so forth:

Para 2 (a) If beneficiary is already undergoing treatment under Allopathic system, (the beneficiary) will not be granted permission to take treatment concurrently under Ayush System. But beneficiary may shift to another system of medicine after stopping treatment in one system for which permission would be granted. The choice of selecting one system of medicine to avail treatment as per their choice is entirely of the beneficiary. Permission to obtain treatment under two or more systems of medicine concurrently would not be granted.¹⁰

The choice of doctor and medical treatment is of the beneficiary alone, as the beneficiary has the Constitutional right to undivided autonomy over its body, mind, and life. In view of the right to obtain 2nd medical opinion, what best the Medical Officers would do is not to discourage the beneficiaries but to help the beneficiaries to take informed decisions as to the choice of the medical treatment of the same ailment advised by different doctors of whatsoever origin, to issue medicines under the Health Care Scheme the Government offers. After all, doctors have to take informed consent from the beneficiaries to provide treatment.

Every surgeon carries within himself a small cemetery, where from time to time he goes to pray - a place of bitterness and regret, where he must look for an explanation for his failures.¹¹

Cause of action:

It is worrisome that neither the C.G.H.S. nor the E.C.H.S. have policies to facilitate the beneficiaries in exercising their right to obtain the 2nd medical opinion approved and recognised

¹⁰ Ayush GoI (Mod) letter no. 22B(06)/2017/WE/D(Res-1) dated 8 Aug 2018. (C.O. E.C.H.S. letter no. B/49770/AG/ECHS/Treatment/2022 dated 26th Sep 2022)

¹¹ Dr. René Leriche. Do No Harm, the autobiography of Surgeon Dr. Henry Marsh

by the Government of India and that of States and Union Territories.

I filed several complaints as referred above in the PGPORTAL. The follower E.C.H.S., therefore, wrote a letter to the parent policy maker C.G.H.S. for "necessary inputs"¹² and got the following reply:

Dr Vedantam Subash, AD R&H of CGHS HQ has confirmed through email dt 24 Nov 21 that their section is not aware and not in receipt of any such policy letter in CGHS on second opinion by a specialist for the same ailment.¹³

Later, the E.C.H.S. wrote a letter to the D.G.A.F.M.S. for necessary action¹⁴, but failed to disturb slumber.

The RTI Act, 2005, was, therefore, resorted to know the rights of patients specifically about the right to obtain 2nd medical opinion, which shamefully and recursively got transferred between the Ministry of Health and Family Welfare, Central Government Health Scheme, and the Ex-servicemen Contributory Health Scheme without providing the information sought - it was absolutely unexpected from the offices entrusted with care of the lives of aged beneficiaries:

- (1) MOHFW/R/E/22/04451
- (1.1) MODEF/R/T/22/01474
- (1.1.1) DEXSW/R/T/22/00417
- (1.1.1.1) MOHFW/R/T/23/00187
- (1.1.1.1.1) CGHSD/R/T/23/00017
- (1.1.1.1.1.1) ECHSD/R/T/23/00005
- (1.2) CGHSD/R/T/23/00002
- (1.2.1) ECHSD/R/T/23/00002

Several RTI 1st Appeals were, therefore, filed simultaneously on 29th May 2023 with the Ministry of Health and Family Welfare, Central Government Health Scheme New Delhi, Dr. P.P. Sharma Sena Bhawan D.E.S.W., and the Provost Marshal ADG (AE) RTI Cell Army, which got transferred to the Ministry of Health and Family Welfare.

Eventually Dr. Anil Kumar the Additional DDG(AK) and First Appellate Authority, Directorate General of Health Services from the National Council Secretariat, Ministry of Health and Family Welfare, Government of India confirmed approval and recognition of the right to obtain 2nd medical opinion by the letter being

¹² C.O. E.C.H.S.'s letter being no. B/49717-CPGRAMS/AG/ECHS(160) dated 17th Nov 2021 (copy enclosed).

¹³ Email of Col Anirudh Shekhawat Director Complaints C.O. E.C.H.S. dated 3rd Dec 2021 (copy enclosed).

¹⁴ C.O. E.C.H.S.'s letter no. B/49717-CPGRAMS/AG/ECHS(196) dated 30th Dec 2021 (copy enclosed).

no. FTS - 8227200 File No. Z.28016/32/2023-SAS-II(NCS) dated 28th June 2023 (supra).

Having business of taking care of lives, it is unacceptable and a possible lawsuit that the C.G.H.S. and the E.C.H.S. are sleeping on the beneficiaries' right to obtain 2nd medical opinion. It is nothing but violation of patients' rights.

Requisition:

- 1) Since it is matter of life of the aged beneficiaries living alone, now it is high time to demand immediate creation of policy for facilitating the beneficiaries to entertain their right to obtain 2nd medical opinion.
- 2) The E.C.H.S. will provide me a copy of the policy in reply.
- 3) During framing of the policy, consideration of disambiguation on the right to obtain 2nd medical opinion as herein provided is strenuously requested.

Now let us see, whether you slow down the bus and announce the route, or you stereotypically reject this complaint stating that suggestions are not solicited in the PGPORTAL. Thanks.

Hopefully, &c.,

Place: Dum Dum, Calcutta.

Enclosures:

(Signed)

(Digital copies)

ANIRBAN CHAKRABORTY

In the order as stated in the

Patient-party and authorised representative. footnotes.

Copy forwarded for information and necessary action to:

- i. The Managing Director C.O. E.C.H.S., New Delhi.
- ii. The Director Complaints and Litigations C.O. E.C.H.S.

AFFIDAVIT

I Anirban Chakraborty S/o Nk Gopal Chakraborty (Retired) aged about 35 years being an Indian citizen and in the capacity of being the offspring and the patient-party; do hereby solemnly affirm that the statements made in this complaint are true to my knowledge and information received and the rest are my humble submissions.

Harassment of the RTI Applicant:

The administrators of the E.C.H.S. are indifferent and unfaithful to the aged, alone, and helpless beneficiaries living in their sunset years, who are ignorant of law. My RTI Application DEXSW/R/E/22/00891 was meant to do an investigation in this regard; the limited RTI Reply was sufficient to expose some of the accused administrators; doing so, I filed the First Appeal to complete the investigation and to expose the remaining accused E.C.H.S.'s officials. My investigation was a source of danger to some of them. So, to stop me from filing new RTI Applications and

to discourage me from continuing the RTI Applications already filed in the interest of all the beneficiaries, on 2nd Dec 2022 the Officer-in-Charge Station Cell E.C.H.S. HQ Bengal Sub Area filed a false complaint against me asking higher authorities to blacklist me. The nature of the false complaint was so scandalous and defamatory that I could not accompany my aged father to the Polyclinic for months. Later, on the order of Managing Director C.O. E.C.H.S. a meeting was held for 3 hours in Fort William Calcutta; consequently I was declared not guilty and the Director Regional Centre Kolkata informed that in email to the Managing Director. That is insufficient for me, so I filed follow-up RTI Application DEXSW/R/E/23/00418 and the First Appeal DEXSW/A/E/23/00080; the Officer-in-Charge Station Cell E.C.H.S. HQ Bengal Sub Area was directed to respond; but it seems that the Army has joined hands to protect the criminal by remaining silent, making mockery of the RTI Act. **The black flag shall not be removed in protest, until the Indian Military honestly provides reply to my follow-up RTI Application and initiates the process of General Court Martial against the Officer-in-Charge Station Cell E.C.H.S. HQ Bengal Sub Area.**

ANIRBAN CHAKRABORTY

Signature in ink is not required,
as filed in PGPORTAL after due
authentication.

